IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Arbitration Case No.41 of 2005
DATE OF DECISION: March 20, 2007

BHULLAR CONSTRUCTION COMPANY

.....PETITIONER
through Mr. Munishwar Puri,
Advocate.

VERSUS

PUNJAB SMALL INDUSTRIES AND OTHERS

.....RESPONDENTS
through Mr. Brijeshwar Singh,
Advocate

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN, CHIEF JUSTICE

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

VIJENDER JAIN, CHIEF JUSTICE (ORAL)

This petition has been filed under Section 11 of the Arbitration and Conciliation Act 1996, *inter-alia* praying for appointment of an Arbitrator by the Court as the respondent inspite of the Arbitration Clause in the contract and invokation of the said clause, has not supplied the vacancy of the Arbitrator.

Learned counsel appearing for the petitioner has contended that following was the Arbitration Clause 24(A) in the agreement:-

> "If any question, difference or objection what so ever shall arise in any way connected with or arising out of this instrument or the meaning or operation of any part thereof or the rights, duties or liabilities of either party

then save in so far as the decision of any such matter is hereinbefore provided for an has been so decided, every such matter including whether it has been finally decided accordingly, or whether the contract should be terminated or has been rightly terminated and as regards the right and obligations of the parties as the result of such termination shall be referred for arbitration to Chief Engineer Punjab Small Industries & Export Corporation Ltd., Chandigarh acting as such of the time of reference within 180 days or 6 months from the payment of final bill or written notice issued to the contractor that his bills is ready for payment and his decision shall be final and binding and where the matter involves a claim for or the payment or recovery or deduction of money only the amount, if any, awarded in such arbitration shall be recoverable in respect of the matter so referred. If matter is not referred to arbitration within the specified period all the rights and claims under the contract shall be deemed to have been forfeited and absolutely barred."

It is a case of the petitioner that the contract was over in August, 2002 and the work was completed thereon and thereafter the petitioner wrote to the respondent vide letter dated 16.07.2003 that in the measurement although prepared jointly, there was sizable difference between the measurement taken by petitioner and the respondent respectively. Respondent refused to appreciate the reasoning given by the petitioner and the final bill was also not prepared in spite of repeated reminders. The petitioner prepared a comprehensive final bill and sent the

same to the respondent for processing . Thereafter, again on 06.01.2004, the petitioner impressed upon the respondent that inspite of raising the bill, no payment has been made and further granted 10 days time from the date of receipt of communication of the aforesaid letter and put the respondent on notice that in case they do not proceed to pay the amount, the petitioner would seek redressal from appropriate Form having jurisdiction in terms of the contract without any further notice. Nothing was heard from the respondent. The petitioner again served a notice Annexure P-4 dated 03.02.2004, *inter-alia* invoking the arbitration clause in terms of 25(A) of the contract for adjudication of the dispute listing the claims in the said letter. The respondent did not reply to the said letter, did not respond, did not take any action.

After the filing of the petition, a short reply has been filed by the respondent.

Mr. Singh, learned counsel appearing for the respondent has contended that the petitioner has only out-lined the claims pursuant to its letter dated 03.02.2004 and has not filed any claim before the said Arbitrator and, therefore, no adjudication was possible.

I have given my carefully consideration and heard both the parties at length.

It seems that the respondent has not realised the correct position in law. Once the respondent received the letter dated 03.02.2004, invoking the arbitration clause, it was incumbent upon the respondent to have appointed the Arbitrator in terms of the arbitration clause, which has been reproduced above for adjudication of the claim submitted by the petitioner, but no action has been taken by the respondent. The respondent has lost his right to supply the vacancy. The argument of the learned counsel for the respondent is that there is no request from the petitioner for appointment of Arbitrator is also not based on facts as stated

in letter dated 03.02.2004 whereby the petitioner had requested the respondent to refer the matter to the Arbitrator in terms of Arbitration Clause 25(A) of the contract agreement. At this stage, learned counsel for the respondent states that matter in fact was before the Arbitrator but the Arbitrator could not proceed with the matter further because there was no claim filed before him. Failure of the Arbitrator to adjudicate upon the dispute will also give a cause for the petitioner to maintain its petition under Section 11 of the Arbitration and Conciliation Act, 1996. The whole idea of arbitration clause in the contract is for an effective redressal of the grievances by the parties leaving the normal remedy provided under civil law. Therefore, if a party has not acted with promptitude, that party loses the right of raising technical objection so as to process of speedy redressal of dispute between the parties.

In view of the totality of facts and circumstances, the respondents have failed to adjudicate the dispute having been referred to the respondent pursuant to the arbitration clause and, thus, held themselves liable not to supply a vacancy of Arbitrator.

With the consent of the parties, I appoint Justice Kiran Anand Lall,(retired Judge of Punjab & Haryana High Court) as Sole Arbitrator to adjudicate upon the dispute between the parties.

The Arbitrator shall fix her own fee. Registry is directed to send a copy of this order to the Arbitrator.

Parties to appear before the Arbitrator on 7.04.2007 at 4.00 PM at the residence of the Arbitrator.

Petition stands disposed of.

(VIJENDER JAIN)
CHIEF JUSTICE

March 20, 2007
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